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11 INTUSCARE INC.

12 UNITED STATES DISTRICT COURT
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14 NORTHERN DISTRICT OF CALIFORNIA
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16 INTUSCARE INC.,
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18 Plaintiff,
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20 v.
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22 RTZ ASSOCIATES, INC.; and DOES 1
23 through 10,
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25 Defendants.
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Case No. 4:24-cv-1132-JST

Assigned to: Hon. Jon S. Tigar

**PLAINTIFF INTUSCARE INC.'S
OPPOSITION TO EVIDENTIARY
OBJECTIONS IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: June 26, 2025

Time: 2:00 p.m.

Courtroom: 6

Complaint Filed: February 23, 2024

Amended Complaint Filed: April 2, 2024

Counterclaims Filed: June 20, 2024

1 **I. INTRODUCTION**

2 RTZ Associates Inc.’s (“RTZ”) objections to the Declaration of Charles Weir (“Weir
3 Declaration”) in support of IntusCare Inc.’s (“Intus”) Motion for Partial Summary Judgment
4 (“Motion”) fail for several reasons. RTZ objects to four exhibits and one paragraph in the Weir
5 Declaration. As set forth below, these objections are meritless, and the Court should overrule the
6 objections. Alternatively, even if the Court sustains the objections, such a ruling does not affect the
7 disposition of the Motion because none of the challenged evidence pertains to a material disputed
8 issue of fact.

9 **II. RTZ’s Objections to Exhibits 1, 2, and 3 Are Moot and Meritless**

10 Exhibits 1-3 to the Weir Declaration are true and correct copies of three webpages. Exhibit
11 1 is a copy of the Office of the National Coordinator for Health Information Technology’s (“ONC”)
12 Certified Health IT Product List website, listing RTZ as being ONC-ACB Certified. Exhibits 2 and
13 3 are copies of RTZ’s own website, on which RTZ represented PACECare as an “ONC-ATBC
14 certified Electronic Health Record,” and stated that PACECare provides “certified lab interfaces”
15 and “certified e-prescribe interfaces.” The designation in Exhibit 1 and the representations in
16 Exhibits 2 and 3 demonstrate that RTZ is an “Actor” subject to the information blocking regulations
17 under 45 CFR §171.102. RTZ objects to these exhibits as lacking authentication and argues,
18 without any authority or explanation, that these “records should have been the subject of a request
19 for judicial notice.” This argument fails for two reasons.

20 First, RTZ’s objections are moot. The only legal proposition for which these exhibits were
21 introduced was to demonstrate that RTZ is an Actor under the Cures Act. That point is undisputed.
22 RTZ has conceded that it is an Actor subject to the Cures Act by failing to respond to this argument
23 in its Opposition. “[F]ailure to respond in an opposition brief to an argument put forward in an
24 opening brief constitutes waiver or abandonment in regard to the uncontested issue.” *Stichting*
25 *Pensioenfond ABP v. Countrywide Fin. Corp.*, 802 F. Supp. 2d 1125, 1132 (C.D. Cal. 2011);
26 *Kroeger v. Vertex Aerospace LLC*, No. CV 20-3030-JFW(AGRX), 2020 WL 3546086, at *8 (C.D.
27 Cal. June 30, 2020) (holding that a party conceded argument by failing to address it in the
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1 opposition brief and collecting cases holding the same).

2 Second, RTZ's objections are meritless. Federal Rule of Evidence 901(a), which governs
3 authentication, "generally sets a 'low bar' to admissibility." *United States v. Nelson*, 533 F. Supp.
4 3d 779, 800 (N.D. Cal. 2021). A proponent may authenticate evidence through "[t]estimony that
5 an item is what it is claimed to be." Fed. R. Evid. 901(b)(1). "[I]t is sufficient under Rule 901 of
6 the Federal Rules of Evidence for Defense Counsel to authenticate the document by attesting to the
7 authenticity and providing the URL along with the date accessed." *Heiting v. Taro Pharms. USA,*
8 *Inc.*, 728 F. Supp. 3d 1112, 1119 (C.D. Cal. 2024). And that is exactly what the Weir Declaration
9 does for Exhibits 1-3. Additionally, Exhibit 1 comes from a government website, and is therefore
10 self-authenticating under Rule 902(5). *See Haines v. Home Depot U.S.A., Inc.*, No. 1:10-CV-01763-
11 SKO, 2012 WL 1143648, at *8 (E.D. Cal. Apr. 4, 2012) ("Federal courts consider records from
12 government websites to be self-authenticating under Rule 902(5).").

13 **III. RTZ's Objection to Exhibit 9 Is Meritless**

14 Exhibit 9 to the Weir Declaration is a true and correct copy of an email from an Intus client
15 terminating its contract with Intus after being threatened by RTZ with a breach of contract action
16 if it continued working with Intus. RTZ objects to this exhibit as not properly authenticated and
17 hearsay. These objections are meritless.

18 First, the email is properly authenticated. As explained, authentication "generally sets a 'low
19 bar' to admissibility." *Nelson*, 533 F. Supp. 3d at 800. Exhibit 9 was produced in discovery, as
20 evidenced by the bates stamp, and counsel has sufficient familiarity with the document to attest to
21 its authenticity.

22 Next, the email from the Intus client is not hearsay because it relays the client's then-
23 existing state of mind, which is an exception under Fed. R. Evid. 803(3); namely, it shows that the
24 client was concerned about the consequences of continuing to do business with Intus.

25 Finally, the objection is moot. The only citation to Exhibit 9 is to support UMF # 7. UMF
26 # 7 is not disputed by RTZ. Moreover, even if the Court sustains this objection, beyond Exhibit 9,
27 there is other undisputed evidence that RTZ prohibited Intus' clients from granting Intus access to
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1 PACECare (*see* Exhibits 5-8 to the Weir Declaration) and that due to RTZ’s information blocking
2 practices, Intus has been completely locked out of access to PACECare and has had contracts
3 terminated (*see* Declaration of Robbie Felton in support of Intus’ Motion for Partial Summary
4 Judgment ¶ 16). RTZ has not objected to or challenged Exhibits 5-8 to the Weir Declaration or
5 paragraph 16 of the Felton Declaration—all of which attest to RTZ’s information blocking conduct
6 and its harmful consequences. Therefore, even if the Court sustains the objection to Exhibit 9, there
7 are other unchallenged sources of evidence proving the same undisputed fact.

8 **IV. RTZ’s Objection to Paragraph 11 Is Irrelevant and Meritless**

9 Paragraph 11 of the Weir Declaration states, “Intus is not accessing RTZ’s intellectual
10 property and has provided RTZ with all of the information it needs to confirm that, including the
11 automated scripts Intus ran to secure the necessary information from the Intus Clients, and dates of
12 Intus’ logins to PACECare for the Intus Clients.” RTZ objects that this paragraph is impermissible
13 opinion testimony and that the declarant has not demonstrated personal knowledge. This objection
14 is meritless. Alternatively, even if this Court sustains the objection, the facts in paragraph 11 do not
15 affect the outcome of Intus’ Motion. The facts were provided only as background, and RTZ does
16 not even raise a claim regarding its intellectual property in its Opposition.

17 RTZ’s objection is meritless because the declarant, who is counsel for Intus, has personal
18 knowledge about the information that Intus provided to RTZ in discovery, such as the automated
19 scripts and dates of logins. The “requirement of personal knowledge imposes only a ‘minimal’
20 burden on a witness.” *Strong v. Valdez Fine Foods*, 724 F.3d 1042, 1045 (9th Cir. 2013)
21 Additionally, “witnesses may relate their opinions or conclusions of what they observed,” such as
22 the documents produced to RTZ and the significance of those documents. *U.S. v. Skeet*, 665 F.2d
23 983, 985 (9th Cir. 1982). RTZ does not even claim that Intus was accessing its intellectual property
24 or contest that it has the information available to it to determine if it was.

25 Even if the Court sustains this objection, there is no effect on the outcome of Intus’ Motion.
26 The content in paragraph 11, whether Intus was accessing RTZ’s intellectual property, is not a
27 material fact. *See Bangkok Broad. & T.V. Co. v. IPTV Corp.*, 742 F. Supp. 2d 1101, 1109 (C.D.

1 Cal. 2010) (“A ‘material’ fact is one that could affect the outcome of the case under the governing
2 substantive law.”). Only triable issues of *material* fact will defeat summary judgment. *See* Fed. R.
3 Civ. P. 56(a). There is nothing in the Cures Act—which is the only statute at issue in Intus’
4 Motion—that allows an entity to block access based on unsubstantiated fear for its intellectual
5 property. And RTZ has not argued otherwise. Therefore, whether Intus accessed RTZ’s intellectual
6 property (it did not) is completely inapposite to the information blocking claim at issue. For that
7 reason, even if the Court disregards the content of paragraph 11, it does not affect the outcome of
8 the Motion.

9 **V. CONCLUSION**

10 The Court should overrule RTZ’s objections, or, alternatively, disregard the objections as
11 moot or irrelevant to the outcome of Intus’ Motion for Partial Summary Judgment.

12 Dated: May 9, 2025

MANATT, PHELPS & PHILLIPS, LLP

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15 By: 

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